IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.249 OF 2006

The Commissioner of Central Excise)
Mumbai-III, 4th Floor, Vardan Trade)
Centre Wagle Estate, MIDC, Thane-400604)..Appellant.

V/s.

M/s.M/s.Vidyut Metallics Pvt. Ltd.)
LBS Marg, Wagle Industrial Estate,)
Thane 400 604.)..Respondent.

Mr.P.S.Jetly with K.R.Chaudhari, Ms.Heera Shah i/b. H.P. Chaturvedi for appellant.

Mr.Prakash Shah i/b. PDS Legal for respondent.

CORAM : F.I.REBELLO AND
J.P.DEVADHAR, JJ.

DATED : 30TH AUGUST, 2007.

ORAL JUDGMENT (PER F.I.REBELLO, J.)

The Tribunal by its order dated 24/4/2006 allowed the appeal filed by the respondent herein. The appellant herein having two plants identified as Plant I and Plant II, applied for a common registration relying upon the notification No.36/01- CE(NT) dated 26/06/2001. The relevant part of the said Notification reads as under:-

"..hereby declares that if two or more

premises of the same factory are separated by public road, railway line or canal, the Commissioner of Central Excise may, subject to proper accountal of the movement of goods from one premises to another and such other conditions and limitations, allow single registration. "

The Commissioner of Central Excise by order dated 1/4/2005 held that the notification relied upon was prospective and refused common registration. Various contentions as to the staff, management and other factors have been set out in the order. Some of the reasons given are set out in paras 6, 7 & 8 of the said order.

2. In appeal, the learned Tribunal found that the reasons for not granting common registration was based on the finding of the Commissioner that the Notification is prospective. The learned Tribunal in para 3 noted that Plant II is engaged in the manufacture of CRSS strips which are being cleared by them on payment of duty to Plant No.1 where they are being used as raw material. The units were separated by a public road in between. For the said reasons and other reasons held that the Notification would apply

also to the existing units and allowed the appeal, which is the subject matter before this Court.

3. Two questions of law have been framed in para 4. Both, if read together would really mean whether the Notification can be considered as prospective.

4. On a consideration of the terminology of the Notification, what would be relevant is the expression "two or more premises of the same factory are separated by a public road, railway line or canal". It will be clear, therefore, that the notification takes into consideration not only units which may come up after the notification but also units which are existing. True the notification does not say expressly that it will apply to existing units or in other words apply to only units set up after the notification. We have to gather the intention from the words and expressions used. The object of the notification can be to minimize the paper work. That being the object and also the language of the expression, there can be no dispute that it will apply to the existing units also. The Commissioner however while considering the application must satisfy himself that the movement of goods is subject to proper accounting from one premises

to another and may impose such other conditions and thereafter allow single registration.

5. The Tribunal has recorded a finding that the Notification also applies to the existing units. Considering this view that we have taken, the order cannot be faulted.

6. In the light of the above, in our opinion, the order of the Tribunal does not suffer from any illegality and the questions of law as framed do not arise. Consequently, the appeal is dismissed.

(F.I.REBELL0, J.)

(J.P.DEVADHAR, J.)